WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2951

(By Mr. Del. J. Martinez & Cerra)

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Passed March 9, 1991

In Effect From Passage
AN ACT to amend and reenact article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the division of culture and history; qualifications of commissioner; changing administrative structure within the division; permitting three additional sections within the division; reordering sections and changing references; authorizing fees prescribed by the commissioner by rule for use of facilities; increasing membership on the archives and history commission from nine to thirteen and adding an archivist, a librarian, and a museum specialist to the commission; and authorizing division to enter into agreements with responsible individuals in carrying out its purposes.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

1 The division of culture and history and the office of 2 commissioner of culture and history heretofore created 3 are hereby continued. The governor shall nominate, and 4 by and with the advice and consent of the Senate, 5 appoint the commissioner, who shall be the chief
executive officer of the division and shall be paid an annual salary and be governed by the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history or a related field.

The division shall consist of five sections and two citizen's commissions as follows:

1. The arts and humanities section and a commission on the arts;
2. The archives and history section and a commission on archives and history;
3. The museums section;
4. The historic preservation section; and
5. The administrative section.

The commissioner shall exercise control and supervision of the division and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the division is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for historical, prehistoric, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural, historical and artistic activities in state government and at state-owned facilities; to acquire, preserve and classify books, documents, records and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the culture of the state.

The division shall have jurisdiction and control and
may set and collect fees for the use of all space in the building presently known as the West Virginia science and culture center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided for in section fourteen of this article; and any other sites as may be transferred to or acquired by the division.

For the purposes of this article "commissioner" means the commissioner of culture and history, and "division" means the division of culture and history.

§29-1-1a. Transfer of powers and duties; existing contracts and obligations.

Except as otherwise provided in this article, the powers and duties of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history are hereby transferred to the division of culture and history. All existing contracts and obligations of the West Virginia antiquities commission, the West Virginia arts and humanities council and the department of archives and history, or relating to the present science and culture center, shall remain in full force and effect and shall be performed by the division of culture and history.

§29-1-1b. Termination date.

The division of culture and history, together with its citizen's commissions, shall continue to exist until the first day of July, one thousand nine hundred ninety-six, upon which date it shall terminate unless sooner continued and reestablished pursuant to the provisions of article ten, chapter four of this code.

§29-1-2. General powers of commissioner.

The commissioner shall assign and allocate space in all facilities assigned to the division and all space in the building presently known as the West Virginia science and culture center, and any other buildings or sites
under the control of the commissioner, and may, in accordance with the provisions of chapter twenty-nine-a of this code, prescribe rules, regulations and fees for the use and occupancy of said facilities, including tours.

The commissioner shall coordinate the operations and affairs of the sections and commissions of the division and assign each section or commission responsibilities according to criteria the commissioner deems most efficient, productive and best calculated to carry out the purposes of this article. The commissioner shall provide to the fullest extent possible for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. The commissioner may establish such other sections for such purposes as he or she deems necessary, and may appoint directors thereof. The commissioner may appoint a director of the West Virginia science and culture center. The commissioner shall serve as the state historic preservation officer and shall chair the capitol building commission.

After consultation with the section directors and the commissions, the commissioner shall prepare a proposed division budget for submission to the governor for each fiscal year.

No contract, agreement or undertaking may be entered into by any section of the division which involves the expenditure of funds without the express written approval of the commissioner as to fiscal responsibility.

The commissioner shall prepare and submit to the governor an annual report in accordance with the provisions of section twenty, article one, chapter five of this code, which report shall include a detailed account of the activities of each section and commission of the division.

The commissioner shall employ all personnel for the sections, except for persons in the professional positions established within the sections as provided in this article; and shall supply support services to the commissions and to the governor's mansion advisory committee.
§29-1-3. Commission on the arts.

1 The commission on the arts heretofore created is hereby continued and shall be composed of fifteen appointed members.

2 The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

3 No more than eight members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

4 The commission shall elect one of its members chair. It shall meet at such time as shall be specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the members shall constitute a quorum for the transaction of business. The director of the arts and humanities section shall be an ex officio nonvoting member of the commission and shall serve as secretary. The director or a majority of the members may also call a meeting upon such notice as provided in this section.

5 Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

6 Upon recommendation of the commissioner, the governor may also appoint such officers of the state as may be appropriate to serve on the commission as ex officio nonvoting members.

7 The commission shall have the following powers:
(1) To advise the commissioner and the director of the arts and humanities section concerning the accomplishment of the purposes of that section and to establish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts and humanities section;

(3) To request, accept or expend federal funds to accomplish the purposes of the arts and humanities section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts and humanities section;

(5) To approve rules and regulations concerning the professional policies and functions of the section as promulgated by the director of the arts and humanities section; and

(6) To advise and consent to the appointment of the director by the commissioner.

§29-1-4. Arts and humanities section; director.

The purposes and duties of the arts and humanities section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public or private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the division's facilities or on tour; and to perform such other duties as may be assigned to said section by the commissioner.

With the advice and consent of the commission on the arts, the commissioner shall appoint a director of the arts and humanities section, who shall have: (1) A
bachelor's degree in the fine arts or related field or equivalent training and experience; or (2) three years' experience in administration of the fine arts or a related field. Notwithstanding these qualifications, the person serving as the executive director of the arts and humanities council on the date of the enactment of this article shall be eligible for appointment as the director of the arts and humanities section.

With the approval of the commissioner, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section.

The director may promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code concerning the professional policies and functions of the arts and humanities section, subject to the approval of the commission on the arts.

§29-1-5. Archives and history commission.

The archives and history commission which is hereby created shall be composed of thirteen appointed members, two ex officio voting members and five ex officio nonvoting members as provided in this section.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

No more than seven of the appointed members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state. The archives and history commission shall contain the required professional representation necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended, and shall serve as the “state review board” and shall follow all rules and regulations as specified therein. This representation shall include the following professions: Historian, architectural historian, historical
architect, archaeologist specializing in historic and
prehistoric archaeology, archivist, librarian and mu-
seum specialist.

The commission shall elect one of its members chair.
It shall meet at such time as shall be specified by the
chair. Notice of each meeting shall be given to each
member by the chair in compliance with the open
meetings law. A majority of the voting members shall
constitute a quorum for the transaction of business.

In addition to the thirteen appointed members, the
president of the state historical society and the president
of the state historical association shall serve as ex officio
county members of the archives and history commission.
The director of the state geological and economic survey,
the president of the West Virginia Preservation Al-
liance, Inc., and the state historic preservation officer
shall serve as ex officio nonvoting members of the
archives and history commission.

The directors of the archives and history section, the
historic preservation section and the museums section
shall be ex officio nonvoting members of the commis-
sion. The director of the archives and history section
shall serve as secretary of the commission. The secre-
tary, or a majority of the members, may also call a
meeting upon such notice as provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reim-
bursed for all reasonable and necessary expenses
actually incurred in the performance of the duties of the
commission; except that in the event the expenses are
paid, or are to be paid, by a third party, the member
or ex officio member, as the case may be, shall not be
reimbursed by the state.

The commission shall have the following powers:

(a) To advise the commissioner and the directors of
the archives and history section, the historic preserva-
tion section and the museums section concerning the
accomplishment of the purposes of those sections and to
establish a state plan with respect thereto;
(b) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history section, the historic preservation section and the museums section;

(c) To request, accept or expend federal funds to accomplish the purposes of the archives and history section, the historic preservation section and the museums section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the archives and history commission;

(d) To otherwise encourage and promote the purposes of the archives and history section, the historic preservation section and the museums section;

(e) To approve rules and regulations concerning the professional policies and functions of the archives and history section, the historic preservation section and the museums section as promulgated by the directors of those sections;

(f) To advise and consent to the appointment of the section directors by the commissioner; and

(g) To review and approve nominations to the state and national registers of historic places.

§29-1-6. Archives and history section; director.

(a) The purposes and duties of the archives and history section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition documents and records having historical, evidential, administrative and/or legal value relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation of such documents and records; to direct, protect, preserve, study and disseminate information on such documents and records; to operate and maintain a state
library for the preservation of all public records, state
corporations, and reports of all three branches of
state government including all boards, commissions,
departments and agencies as well as any other private
or public papers, books or documents of peculiar or
historic interest or significance; to designate appro-
propriate monuments, tablets or markers for historic,
architectural and scenic sites within the state and to
arrange for the purchase, replacement, care of and
maintenance of such monuments, tablets and markers
and to formulate and prepare suitable copy for them; to
et and publish a historical journal devoted to the
history, biography, bibliography and genealogy of West
Virginia; and to perform such other duties as may be
assigned to the section by the commissioner.

(b) With the advice and consent of the archives and
history commission, the commissioner shall appoint a
director of the archives and history section, who shall
have: (1) A graduate degree in one of the social sciences,
or equivalent training and experience in the field of
West Virginia history, history, or in records, library or
archives management; and (2) three years' experience in
administration in the field of West Virginia history,
history, or in records, library or archives management.
Notwithstanding these qualifications, the person serving
as the state historian and archivist on the date of
enactment of this article shall be eligible for appoint-
ment as the director of the archives and history section.
The director of the archives and history section shall
serve as the state historian and archivist.

(c) With the approval of the commissioner, the
director shall establish professional positions within the
section and develop appropriate organizational struc-
tures to carry out the duties of the section. The director
shall employ the personnel with applicable professional
qualifications to fill positions within the organizational
structure with the minimum professional qualifications.
At the minimum, the following professions shall be
represented within the section staff: Historian, archivist,
librarian and technical and clerical positions as are
required.
(d) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the archives and history section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

§29-1-7. Museums section; director.

(a) The purposes and duties of the museums section are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic objects worthy of preservation, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such objects; to direct, protect, excavate, preserve, study or develop such objects; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to operate and maintain a state museum, and to coordinate activities with other museums in the state; and to perform such other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the archives and history commission, in addition to the duties above set forth, the section shall determine the whereabouts of and require the return of furnishings and objects missing from the capitol building and other state-owned or controlled buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except pursuant to the provisions of article three, chapter five-a of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale procedures, such furnishings
shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the museums section, who shall have: (1) A graduate degree in one of the social sciences, or equivalent training and experience in the field of West Virginia history, history, archaeology, or in museum administration; and (2) three years' experience in administration in the field of West Virginia history, history, archaeology, or in museum management.

(d) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure. At the minimum, the following professions shall be represented within the section staff: Curator and such technical and clerical positions as are required. With the approval of the commissioner, the director shall establish professional positions within the section. The director shall employ the personnel within these professional positions for the section.

(e) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the museums section; and (2) such other rules and regulations as may be deemed necessary to effectuate the purposes of this section.

§29-1-8. Historic preservation section; director.

(a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation, including human skeletal
remains, graves, grave artifacts and grave markers, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such sites, structures and objects; to direct, protect, excavate, preserve, study or develop such sites and structures; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the section; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the section; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological, and prehistoric and historic features under the provisions of section eight-a of this article; and to perform such other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the historic preservation section, who shall have: (1) A graduate degree in one of the social sciences, or equivalent training and experience in the field of historic preservation, archaeology, West Virginia history, or history; and (2) three years' experience in administration in the field of West Virginia history, history, historic preservation or archaeology. Notwithstanding these qualifications, the person serving as the deputy state historic preservation officer on the date of enactment of this article shall be eligible for appointment as the director of the historic preservation section. The director of the historic preservation section shall serve as the deputy state historic preservation officer.
(c) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented within the section staff: Historian, architectural historian, a structural historian who specializes in historical preservation, an archaeologist specializing in historic and prehistoric archaeology, and such technical and clerical positions as are required.

(d) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of, and, when required, issuance of permits for, all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation, and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.
§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

(a) Legislative findings and purpose.

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the desecration of human remains and vandalism to grave markers, there is an immediate need to protect the graves of earlier West Virginians from such desecration. Therefore, the purpose of this article is to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

The Legislature also finds that those persons engaged in the scientific study or recovery of artifacts which have been acquired in accordance with the law are engaged in legitimate and worthy scientific and educational activities. Therefore, this legislation is intended to permit the appropriate pursuit of those lawful activities.

Finally, this legislation is not intended to interfere with the normal activities of private property owners, farmers, or those engaged in the development, mining or improvement of real property.

(b) Definitions.

For the purposes of this section:

(1) “Human skeletal remains” means the bones, teeth, hair or tissue of a deceased human body;

(2) “Unmarked grave” means any grave or location where a human body or bodies have been buried or deposited for at least fifty years and the grave or location is not in a publicly or privately maintained cemetery or in the care of a cemetery association, or is located within such cemetery or in such care and is not commonly marked;
(3) “Grave artifact” means any items of human manufacture or use that are associated with the human skeletal remains in a grave;

(4) “Grave marker” means any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with a grave;

(5) “Person” includes the federal and state governments and any political subdivision of this state; and

(6) “Disturb” means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers.

(c) Acts prohibited; penalties.

(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the director of the historic preservation section: Provided, That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder shall not be required to obtain such permit, but shall notify the director of the historic preservation section that such investigation is being undertaken and file reports as are required of persons issued a permit under this section: Provided, however, That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article shall not be required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archaeological sites.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave,
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75 grave artifact or grave marker of historical significance
76 without first having been issued a valid permit by the
director of the historic preservation section, or who fails
78 to comply with the terms and conditions of such permit,
79 is guilty of a misdemeanor, and, upon conviction, shall
80 be fined not less than one hundred dollars nor more than
81 five hundred dollars, and may be imprisoned in the
82 county jail for not less than ten days nor more than six
83 months or both fined and imprisoned.

84 A person who, either by himself or through an agent,
85 intentionally excavates, removes, destroys or otherwise
86 disturbs human skeletal remains of historical signifi-
87 cance without first having been issued a valid permit
88 by the director of the historic preservation section, or
89 who fails to comply with the terms and conditions
90 relating to disinterment or displacement of human
91 skeletal remains of such permit, is guilty of the felony
92 of disinterment or displacement of a dead human body
93 or parts thereof under section fourteen, article eight,
94 chapter sixty-one of this code and, upon conviction, shall
95 be confined in the state penitentiary not less than two
96 nor more than five years.

97 A person who intentionally withholds information
98 about the excavation, removal, destruction, or other
99 disturbance of any historic or prehistoric ruins, burial
100 grounds, archaeological site, or human skeletal remains,
101 unmarked grave, grave artifact or grave marker of
102 historical significance is guilty of a misdemeanor and,
103 upon conviction, shall be fined not more than one
104 hundred dollars, and may be imprisoned in the county
105 jail not more than ten days.

106 (2) No person may offer for sale or exchange any
107 human skeletal remains, grave artifact or grave marker
108 obtained in violation of this section.

109 A person who, either by himself or through an agent,
110 offers for sale or exchange any human skeletal remains,
111 grave artifact or grave marker obtained in violation of
112 this section is guilty of a misdemeanor and, upon
113 conviction, shall be fined not less than one thousand
114 dollars nor more than five thousand dollars, and may be
imprisoned in the county jail not less than six months
nor more than one year.

(3) Each instance of excavation, removal, destruction,
disturbance or offering for sale or exchange under (1)
and (2) of this subsection shall constitute a separate
offense.

(d) Notification of discovery of human skeletal remains
in unmarked locations.

Within forty-eight hours of the discovery of human
skeletal remains, grave artifact or grave marker in an
unmarked grave on any publicly or privately owned
property the person making such discovery shall notify
the county sheriff of the discovery and its location. If the
human remains, grave artifact or grave marker appear
to be from an unmarked grave, the sheriff shall
promptly, and prior to any further disturbance or
removal of the remains, notify the director of the
historic preservation section. The director shall cause an
on-site inspection of the disturbance to be made to
determine the potential for archaeological significance
of the site: Provided, That when the discovery is made
by an archaeological investigation permitted under state
or federal law, the supervising archaeologist shall notify
the director of the historic preservation section directly.

If the director of the historic preservation section
determines that the site has no archaeological signifi-
cance, the removal, transfer and disposition of the
remains shall be subject to the provisions of article
thirteen, chapter thirty-seven of this code, and the
director shall notify the circuit court of the county
wherein the site is located.

If the director of historic preservation determines that
the site has a potential for archaeological significance,
the director shall take such action as is reasonable,
necessary and prudent, including consultation with
appropriate private or public organizations, to preserve
and advance the culture of the state in accordance with
the powers and duties granted to the director, including
the issuance of a permit for the archaeological excava-
tion or removal of the remains. If the director deter-
mines that the issuance of a permit for the archaeological excavation or removal of the remains is not reasonable, necessary or prudent, the director shall provide written reasons to the applicant for not issuing the permit.

(e) Issuance of permits.

All permits issued by the director of the historic preservation section for the disturbance of human skeletal remains, grave artifacts, or grave markers shall at a minimum address the following conditions: (1) The methods by which descendents of proven kinship to the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) the need for any scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any descendents of proven kinship, when available; and (5) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased descendents or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

In addition, a person applying for a permit to excavate or remove human skeletal remains, grave artifacts, grave markers, or any historic or prehistoric features of archaeological significance must:

(1) Provide a detailed statement to the director of the historic preservation section giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

(2) Provide data and results of any excavation, study or collection in annual reports to the director of the historic preservation section and submit a final report to the director upon completion of the excavation; and
(3) Obtain the prior written permission of the owner if the site of such proposed excavation is on privately owned land.

Such permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

Notwithstanding any other penalties to which a person may be subject under this section for failing to comply with the terms and conditions of a permit, the permit of a person who violates any of the provisions of this subsection shall be revoked.

As permits are issued, the director of the historic preservation section shall maintain a catalogue of unmarked grave locations throughout the state.

(f) Property tax exemption for unmarked grave sites.

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the director of the historic preservation section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the director of the historic preservation section shall provide written certification to the land owner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the director of the historic preservation section. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information.

(1) The prosecuting attorney of the county in which
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233 a violation of any provision of this section is alleged to
234 have occurred may be requested by the director of the
235 historic preservation section to initiate criminal prose-
236 cutions or to seek civil damages, injunctive relief and
237 any other appropriate relief. The director of the historic
238 preservation section shall cooperate with the prosecut-
239 ing attorney in resolving such allegations.

240 (2) Persons convicted of any prohibited act involving
241 the excavation, removal, destruction, disturbance or
242 offering for sale or exchange of historic or prehistoric
243 ruins, burial grounds, archaeological site, human
244 skeletal remains, unmarked grave, grave artifact or
245 grave marker under the provisions of subdivisions (1)
246 and (2), subsection (c) of this section shall also be liable
247 for civil damages to be assessed by the prosecuting
248 attorney in consultation with the director of the historic
249 preservation section.

250 Civil damages may include:

251 (i) Forfeiture of any and all equipment used in
252 disturbing the protected unmarked graves or grave
253 markers;

254 (ii) any and all costs incurred in cleaning, restoring,
255 analyzing, accessioning and curating the recovered
256 material;

257 (iii) any and all costs associated with recovery of data,
258 and analyzing, publishing, accessioning and curating
259 materials when the prohibited activity is so extensive as
260 to preclude the restoration of the unmarked burials or
261 grave markers;

262 (iv) any and all costs associated with restoring the
263 land to its original contour or the grave marker to its
264 original condition;

265 (v) any and all costs associated with reinterment of
266 the human skeletal remains; and

267 (vi) any and all costs associated with the determina-
268 tion and collection of the civil damages.

269 When civil damages are recovered, the proceeds, less
270 the costs of the prosecuting attorney associated with the
determination and collection of such damages, shall be
deposited into the endangered historic properties fund
and may be expended by the commissioner of culture
and history for archaeological programs at the state
level, including the payment of rewards for information
leading to the arrest and conviction of persons violating
the provisions of subdivisions (1) and (2), subsection (c)
of this section.

(3) The commissioner of culture and history is
authorized to offer and pay rewards of up to one
thousand dollars from funds on deposit in the endan-
gered historic properties fund for information leading
to the arrest and conviction of persons who violate the
provisions of subdivisions (1) and (2), subsection (c) of
this section.

(h) Disposition of remains and artifacts not subject to
reburial.

All human skeletal remains and grave artifacts found
in unmarked graves on public or private land, and not
subject to reburial, under the provisions of subsection (e)
of this section, are held in trust for the people of West
Virginia by the state and are under the jurisdiction of
the director of historic preservation. All materials
collected and not reburied through this section shall be
maintained with dignity and respect for the people of
the state under the care of the West Virginia state
museum.

§29-1-8b. Protection of historic and prehistoric sites;
penalties.

1 Historic and prehistoric landmarks, sites and dis-
tricts, identified by the historic preservation section, on
lands owned or leased by the state, or on private lands
where investigation and development rights have been
acquired by the state by lease or contract, shall not be
disturbed, or destroyed except as permitted under
sections eight and eight-a of this article.

8 Any person violating the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than five hundred
dollars, or imprisoned in the county jail not more than
six months, or both fined and imprisoned.

§29-1-9. Administrative section; director.

The purposes and duties of the administrative section
are to provide centralized support to the division in all
areas of operations.

The commissioner shall appoint a director of the
administrative section who shall have a bachelor's
degree and two-years experience in responsible positions
involving office management, public administration,
budget and fiscal administration, or related fields; or
six-years experience as outlined above. Notwithstanding
these qualifications, the person serving as director of the
administrative section on the date of enactment of this
section shall be eligible for appointment as director of
the administrative section.

With approval of the commissioner, the director of the
administrative section shall establish professional
positions within the section.

§29-1-10. Division employees classified by civil service;
exceptions.

Effective the first day of July, one thousand nine
hundred seventy-seven, any person employed in any of
the agencies consolidated by this article who is a
classified civil service employee shall, within the limits
provided in article six of this chapter, remain in the civil
service system as a covered employee; and all persons
employed by the division of culture and history shall be
employed under the classified service of the civil service
system within the limits provided in article six of this
chapter.

§29-1-11. Power to accept and receive funds; power to
apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

The division may, in the name of the state of West
Virginia, through the commissioner or its commissions,
accept and receive grants, appropriations, gifts, be-
quests and funds from any public or private source for
the purpose of carrying out the duties and purposes of
this article. The division may, through the commissioner
or its commissions, apply for grants from the federal
government, private foundations and any other source
for the purposes of this article. All funds received from
any source shall be paid into the treasury of the state
and disbursed upon warrant by the state auditor
following requisition by the division. Such requisitions
shall be signed by the commissioner or by such other
person as the commissioner may authorize by written
document deposited with the auditor or, in the event of
emergency, by the governor or the governor's designee.
No funds or gifts received from any source shall be
expended or used for any purpose other than that
intended as evidenced by a positive and affirmative
declaration or by a negative restriction or limitation.

All federal or state funds received to provide grants-
in-aid or awards to further the purposes of this article
shall be approved and distributed by the appropriate
commission established by this article.

§29-1-12. Publication of materials; agreements.

The division of culture and history shall have the
power, responsibility and duty to publish or republish
material of prehistorical, historical, archaeological,
architectural or cultural interest. The division of culture
and history may sell such publications as well as
postcards and other items of such interest at the state
museum or any other site or property administered by
the state or at any special event sponsored by the state.
The division shall have the right to enter into agree-
ments with responsible individuals, private historical,
archaological, architectural or cultural associations,
foundations or similar organizations or any agency of
the federal, state or local government for the purpose
of carrying out its purposes or for raising money to fund
the functions of the division.

§29-1-13. Land; control and disposal; rules and
regulations.

All land owned or leased by the division of culture and
history shall be titled in the name of the public land
corporation of West Virginia but shall be controlled, administered and supervised by the division. The division, in the discretion of its commissioner, may sell or dispose of any real or personal property which, in his or her opinion, does not have sufficient prehistorical, historical, archaeological, architectural or cultural value to justify its retention.

The commissioner shall have the power to make and promulgate rules and regulations relating to the general management and administration of the division.

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

Washington-Carver Camp in Fayette County, heretofore transferred to the public land corporation under the control, administration and supervision of the division of culture and history shall continue under the control, administration and supervision of the division.

The division of culture and history shall undertake to develop such cultural and multicultural, artistic, humanistic and educational programs at the camp as will serve and benefit the citizens of the state and the many cultures represented therein. In order to ensure the maximum reasonable utilization of that portion of the camp under its jurisdiction, the division shall, during times the camp is not being used for the division's purposes, make the camp available, under such terms as the division deems proper, to any other agency of government or nonprofit group desiring to use the camp. The camp shall retain the name "Camp Washington-Carver" as indicative of its heritage of serving the black citizens of the state. The division is authorized to provide necessary and suitable equipment and other resources for implementing the provisions of this section.

No minerals may be assigned, leased or otherwise encumbered, sold, mined, or removed with respect to the property heretofore transferred or the mineral rights retained without specific authorization by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ... this the ... day of ... 1991.

Governor